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# GENDER AND SPECIALIZATION IN THE PRACTICE OF DIVORCE LAW\*

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## I. INTRODUCTION

In the past two decades the gender composition of the legal profession in the United States has changed dramatically. While women comprised less than five percent of the nation's lawyers in 1970,<sup>1</sup> the proportion of women lawyers had increased to more than 19% by the end of 1988,<sup>2</sup> and roughly 40% of new lawyers each year are now women.<sup>3</sup> However, the movement of women into the legal profession has not been easy. As a consequence, considerable commentary has been focussed on the significant problems of sexual harassment, discrimination, and other forms of gender bias,<sup>4</sup> and on such issues as the challenges of combining career and family for both women and men in the law.<sup>5</sup>

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1. CYNTHIA F. EPSTEIN, *WOMEN IN LAW* 4 (1981).

2. Office of Employment and Unemployment Statistics, Department of Labor, *EMPLOYMENT AND EARNINGS*, Jan. 1989, at 389 (1989).

3. RICHARD L. ABEL, *AMERICAN LAWYERS* 285 (1989). This estimate is based on Abel's report that 40% of entering law students in 1986 were women.

4. See, e.g., Deborah R. Round, Note, *Gender Bias in the Judicial System*, 61 S. CAL. L. REV. 2193 (1988); Lynn H. Schafran, *Overwhelming Evidence: Reports on Gender Bias in the Courts*, TRIAL, Feb. 1990, at 28; John Hagan, Marjorie Zatz, et al., *Cultural Capital, Gender, and the Structural Transformation of Legal Practice*, 25 LAW & SOC'Y REV. 239 (1991).

5. See, e.g., Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163 (1988); David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 LAW & SOC. INQ. 251 (1989).

Far less attention has been devoted to understanding whether the entry of larger numbers of women into the profession has altered lawyer behavior, legal ideology, or legal practice. Carrie Menkel-Meadow has suggested how women may bring new assumptions, values, and voices to lawyering, possibly transforming current legal practice.<sup>6</sup> Others have cautioned against underestimating the power of law school and the legal profession to homogenize orientations toward practice.<sup>7</sup> Empirical research about the work and orientations of practicing attorneys is required to shed light on these issues.

Any empirical exploration of the effects of the increased number of women lawyers on the practice of law must take account of an examination of legal specialization.<sup>8</sup> Simultaneous with the increasing numbers of women entering law, the profession has become increasingly specialized.<sup>9</sup> These two developments—increasing numbers of women and growing specialization—pose interesting new questions for scholars of the legal profession and legal process. To the degree that gender and specialization are related, one might expect to find evidence of change only in those legal specialties where women are most heavily represented.

The area of divorce law is an ideal one in which to pursue questions of gender difference in legal practice because of the area's high concentration of women attorneys. In a national survey conducted more than 25 years ago, James White found that 49.8% of all female

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6. Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L. J. 39 (1985).

7. There is considerable debate about the power of law schools in socializing their students. See, for example, ABEL, *supra* note 3, at 212-14; Thomas E. Willging & Thomas G. Dunn, *The Moral Development of the Law Student: Theory and Data on Legal Education*, 31 J. OF LEGAL EDUC. 306 (1981); Howard S. Erlanger & Douglas A. Klegon, *Social Effects of Professional School*, 13 LAW & SOC'Y REV. 11 (1978).

8. See, e.g., Christine B. Harrington & Janet Rifkin, *The Gender Organization of Mediation: Implications for the Feminization of the Legal Practice* (July 1988) (Unpublished manuscript, a previous version of which was presented at the Conference on Women in Law: Assimilation or Innovation? at the University of Wisconsin-Madison, Aug. 3-5, 1987, on file with Richard Maiman.)

9. With the enormous growth of the legal profession as a whole (see, e.g., Barbara A. Curran, *American Lawyers in the 1980s: A Profession in Transition*, 20 LAW & SOC'Y REV. 19, 25 (1986); Office of Employment and Unemployment Statistics, *supra* note 2, at 389), and of large law firms in particular (see, e.g., MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991)), lawyers have increasingly focused their practices on particular subject areas of law. See, e.g., LYNN M. LOPUCKI, *THE DE FACTO PATTERN OF LAWYER SPECIALIZATION* (Institute for Legal Stud., U. of Wis.—Madison L. Sch. Dispute Processing Research Program, Working Paper Series 9, 1990). But DONALD D. LANDON, *COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON LEGAL PRACTICE* (1990) presents data suggesting that this pattern is largely an urban/suburban phenomenon. Not only are lawyers both differentiated and stratified by legal subject area, but also by the nature of their clienteles, with many lawyers specializing in either individual or business clients. See, e.g., JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982).

lawyers worked in domestic relations law, in contrast to 38.6% of the male lawyers.<sup>10</sup> The recent increase in legal specialization has lowered that figure for both women and men (as fewer attorneys accept divorce cases as part of a general practice), yet women remain disproportionately over-represented in the divorce law field. For example, in a recent survey of the New Hampshire bar, 27% of all women attorneys (and only 17% of the men) listed domestic relations as one of their top three specialties, a percentage higher than any other legal specialty for women lawyers in that state.<sup>11</sup> In contrast, business/corporate law was mentioned by 26% of male attorneys in New Hampshire, but by only 19% of females as one of their legal specialties.<sup>12</sup> The much lower proportion of women than men in corporate law has also been reported in a recent study of law school graduates.<sup>13</sup> Given the relative lack of female representation in corporate law, it is somewhat ironic that most studies of women attorneys have emphasized the large corporate law firm setting. Menkel-Meadow<sup>14</sup> has criticized this "almost exclusive focus on the large firm"<sup>15</sup> and argued that "women in the legal profession might still serve as innovators and critics of the profession, though their spheres of influence and sources of innovation may not be found within traditional sites of legal power."<sup>16</sup>

In this Article we explore some gender-based differences (and similarities) among divorce lawyers. We first discuss differences in the social and demographic backgrounds of our sample of male and female lawyers. We then focus on differences in the nature of their fee structures and clienteles. The next section examines some of the ways in which male and female divorce lawyers think about their clients and about the nature of divorce law work. Finally, we turn to a discussion of our findings in light of recent work in feminist jurisprudence. These findings are part of a larger research project on divorce lawyers and the divorce law process in Maine and New Hampshire.<sup>17</sup>

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10. James J. White, *Women in the Law*, 65 MICH. L. REV. 1051, 1062-63 (1967).

11. N.H. Bar Ass'n Task Force on Women in the Bar, *Report of the New Hampshire Bar Association Task Force Report on Women in the Bar*, 29 N.H. BAR J. 213, 230 (1988) [hereinafter *Task Force Report on Women*].

12. *Id.*

13. Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1245 (1988). In this survey of Stanford Law School graduates, 64.8% of the men reported practicing corporate law, compared to only 45.2% of the women.

14. Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. INQ. 289 (1989).

15. *Id.* at 307.

16. *Id.* at 298.

17. For reports of findings on other aspects of our research, see Lynn Mather, Richard Maiman & Craig McEwen, *Negotiating a Divorce: Differences Among Law-*

## II. METHODS OF DATA COLLECTION

Our goal in designing the research was to learn about the day-to-day practice of divorce law and the way it varies across different types of practice. What those types might be was not clear when our research began, but we were interested in variations in practice that might be related to local legal cultures and court structures both within and across states; individual characteristics of practitioners (gender, age, kind of legal training); and the nature of legal practice (divorce specialization, firm size, social class of clients). As a consequence we chose first to gather data from two geographically contiguous states that share to some degree a rural and small town/city quality; and then to select counties within those states that showed some of the expected intra-state variation and yet might be comparable across states.

We selected in each state a small, somewhat isolated, and relatively low-income county without a major population center; a medium-size county with a single population center; and a county with a relatively large population that was (at the time) economically prosperous and growing. We also chose a fourth Maine county contiguous to New Hampshire in an effort to include in our sample some lawyers with divorce practices in both states.

Data for this Article came largely from transcribed interviews with 163 lawyers in Maine and New Hampshire. We chose our interviewees initially through review of current divorce docket listings in our selected courts,<sup>18</sup> taking all names that appeared frequently, about one-half of the moderate-frequency names, and a few of the lesser-frequency ones.<sup>19</sup> We supplemented our list of active divorce lawyers with names identified by other attorneys and by court clerks. Through this process a total of 178 lawyers were identified

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yers (unpublished manuscript, presented at meetings of the Law and Society Association, Amsterdam, June 1991, on file with Richard Maiman); Richard Maiman, Lynn Mather & Craig McEwen, *Lawyering in Divorce Cases: The Impact of Mediation* (unpublished manuscript, presented at meetings of the American Political Science Association, San Francisco, Cal., Aug. 1990, on file with Richard Maiman); *see also infra* note 34.

18. In New Hampshire all divorces are heard in the Superior Court, which resides in the county seat. N.H. REV. STAT. ANN. § 458:9 (1983). In Maine, by contrast, divorces are heard in both District and Superior Courts, with the majority of cases in the District Courts. ME. REV. STAT. ANN. tit. 19, § 664 (West 1981); STATE OF MAINE JUDICIAL DEPARTMENT, ANNUAL REPORT, FISCAL YEAR 1990 (forthcoming 1992) (reporting 6,873 divorces disposed of in District Court compared to 387 disposed of in Superior Court in year ending in June 1991). Hence the Maine docket listings were examined primarily at the District Courts and at the Superior Courts in three county seats.

19. We did not, however, choose any of the large number of attorneys with only one or two divorce cases in the current docket.

and initially contacted by letter for an interview. Four lawyers refused to participate; eleven others did not return phone calls, or had pressing immediate schedules that precluded an interview. As a result we completed 163 interviews for a response rate of 91.6%. Of the interviewees, seventy-five were from New Hampshire and eighty-eight from Maine. Our sample of lawyers thus constitutes a very large portion of what might be termed the "active divorce bar" in the selected areas of New Hampshire and Maine.

The interviews themselves were semi-structured in character, lasting an average of ninety minutes, and were conducted by one of the three authors. All but one of the interviews were tape-recorded; the interviews (or, in one case, the interviewer's notes) were transcribed and coded for analysis.

### III. DEMOGRAPHIC CHARACTERISTICS

Of the 163 lawyers interviewed, 36.8% (60) were female, and 63.2% (103) were male. Women currently comprise about 23% of the bar in New Hampshire<sup>20</sup> and 24% in Maine.<sup>21</sup> The higher proportion of female attorneys in our sample reflects the higher concentration of women in domestic relations law.

The female attorneys we interviewed tended to be younger than their male colleagues and to have completed their law training more recently than the men. Among the female respondents, 94.9% had graduated from law school since 1970, and 41.6% since 1980, compared with 71.6 and 24.2% of the men, respectively. This is consistent with Barbara Curran's national report that, in 1980, 77% of female attorneys had started their practices since 1970.<sup>22</sup> Further, nearly one-quarter (23.3%) of the female lawyers had finished law school in the last five years, compared with only 8.7% of the male attorneys.

There is, however, little to distinguish the women and the men sampled in the types of law schools they attended, as shown in Table 1.

The only major difference that emerges here is in the high percentage of women who attended Franklin Pierce, the only law school in New Hampshire. Combining Franklin Pierce with the "other New England law schools," (Boston University, Suffolk University, Vermont Law School, etc.), we find that the difference essentially disappears; 48.3% of the women and 45.1% of the men attended Franklin Pierce or one of the other regional law schools.

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20. Membership data file of the N.H. Bar Ass'n, Concord, N.H. 1992. The stated percentage includes both active and inactive members.

21. Registration file of the Bd. of Overseers of the Me. Bar Ass'n, Augusta, Me. 1992.

22. Curran, *supra* note 9, at 25.

**Table 1**      **Law School Attended by Gender<sup>23</sup>**

	Females	Males
Top law schools <sup>24</sup>	13.3%	13.7%
Univ. of Maine	20.0%	19.6%
Franklin Pierce	25.0%	11.8%
Other New England law schools <sup>25</sup>	23.3%	33.3%
Other law schools	18.3%	21.6%
	n = 60	n = 102

Chi square = 5.45 with 4 degrees of freedom; p = .24<sup>26</sup>

Although other recent studies have found female attorneys to be less likely than male attorneys<sup>27</sup> to be married or to have children

23. Although the total number of respondents was 103 males and 60 females, the total here (and in some of our other tables) is slightly less due to missing data for the particular question at issue. We use "n" to indicate the sample numbers in each table.

24. This group is comprised of the 26 leading law schools identified in a survey published by Ted Gest, *The Best Law Schools*, U.S. NEWS AND WORLD REPORT, March 19, 1990, at 5g. They are Yale University Law School; University of Chicago Law School; Stanford University Law School; Columbia University School of Law; Harvard University Law School; New York University School of Law; University of Michigan Law School; Duke University School of Law; University of Pennsylvania Law School; University of Virginia School of Law; Northwestern University School of Law; Georgetown University Law Center; University of California at Berkeley—Boalt Hall; Cornell University Law School; Vanderbilt University School of Law; The University of Texas School of Law; University of Southern California Law Center; School of Law, University of California—Los Angeles; University of Notre Dame Law School; Boston College Law School; University of North Carolina School of Law; School of Law, University of California—Davis; George Washington University National Law Center; Emory University School of Law; Washington and Lee University School of Law; University of Illinois College of Law.

25. This group is comprised of Boston University School of Law; Northeastern University School of Law; University of Connecticut School of Law; Vermont Law School; Western New England College School of Law; New England School of Law; Suffolk University Law School.

26. We report chi square tests in each of the following tables as a reference point in interpreting the data. Chi square tests the likelihood that any observed relationship is a consequence of sampling variability as opposed to an actual interrelationship in the population from which the sample was drawn. The p level that we report is the probability that the relationship results from sampling variability; the lower the value of p, the less likely that the observed variation is due to chance. By convention, a p value of .05 or less is considered to be statistically significant. The validity of the test rests on the assumption that the sample approximates a random sample. Although not drawn randomly, our sample represents reasonably well the range of lawyers with specialized or moderate practices of divorce in the two states.

27. Rhode, *supra* note 5, at 1187; *Task Force Report on Women*, *supra* note 11, at 248, 251; Ronald Leslie Hirsch, *Will Women Leave the Law?* 16 BARRISTER 22, 25 (1989). *But see* David L. Chambers, *Accommodation and Satisfaction: Women and*

among the attorneys in our sample, nearly the same percentage in each group (84.2% of the females and 87.8% of the males) were married. The difference among attorneys with children is greater (73.2% of the females versus 89.5% of the males) in our sample, but still not nearly so large as the differences reported elsewhere. However, there is a substantial difference in the proportion of females and males in our sample who reported having been divorced—18.5% and 40%, respectively.

#### IV. CHARACTERISTICS OF LEGAL PRACTICE

A comparison of our female and male respondents according to their types of practice (Table 2) reveals that proportionately more women than men were sole practitioners, a difference that is consistent with national statistics on women and men in private legal practice.<sup>28</sup> Women lawyers working on their own may face fewer interpersonal tensions with colleagues. In a study of job satisfaction among lawyers in different types of practice, Ronald Hirsch found that women in solo practice are "the only women in private practice who are as satisfied as their male counterparts."<sup>29</sup> Table 2 also shows that the female attorneys who worked for law firms were less likely than their male counterparts to be partners. The latter finding is likely a reflection of the lesser seniority of women in the profession.<sup>30</sup>

**Table 2**      **Type of Legal Practice/Status by Gender**

	Females	Males
Sole practitioner	32.8%	27.5%
Firm partner	46.6%	56.9%
Firm associate	19.0%	8.8%
Employee of sole practitioner	1.7%	6.9%

n = 58

n = 102

Chi square = 6.33 with 4 degrees of freedom; p = .18<sup>31</sup>

*Men Lawyers and the Balance of Work and Family*, 4 LAW & SOC. INQ. 251, 264 (1989) for contrary data.

28. Curran, *supra* note 9, at 45. However, statewide statistics for New Hampshire show women in private legal practice to be slightly less likely than men to be sole practitioners. *Id.* at 38.

29. See, e.g., Hirsch, *supra* note 27; Rhode, *supra* note 5; *Task Force Report on Women*, *supra* note 11.

30. It also suggests the possibility that gender bias may play a part in some partnership decisions.

31. See *supra* notes 23 and 26.



A particularly significant difference between female and male lawyers was the tendency of women to devote larger portions of their practices to divorce. Indeed, the high representation of female lawyers in our sample results from the fact that proportionately more women than men were divorce specialists.<sup>32</sup> Asked to name the type of case that is most common in their practice, 76.5% of the women and 55.2% of the men named divorce. (The only similar variation by gender is for criminal cases, which 10.4% of the men but only 2.0% of the women cited as their most common type of case.) For women the mean estimated percentage of caseload devoted to divorce is 51.3; for men it is 36.3. Women report an average of 56 pending divorce cases, whereas men report 35 such cases.

The greater representation of women among divorce specialists is even more clearly illustrated by the fact that while women comprise 36.8% of our sample, they represent 47.8% of the respondents who reported devoting one-third or more of their practice to divorce. By this standard of specialization, as Table 3 shows, fully 75% of the female respondents qualify as divorce specialists, compared with 47.6% of the males.

**Table 3      Divorce Law Specialization By Gender**

	Females	Males
Divorce is 5% to 32% of practice	25.0%	52.4%
Divorce is 33% to 100% of practice	75.0%	47.6%
	n = 60	n = 103
Chi square = 11.68 with 1 degree of freedom; p = .001 <sup>33</sup>		

In response to questions about financial aspects of their legal practices, nearly the same proportions of each group (79.7% of the women and 74% of the men) reported taking pro bono divorce cases. There was only a slight difference between the groups in the mean hourly rates charged for their services: \$102.78 for the women, \$105.77 for the men. However, female lawyers were somewhat more likely than their male counterparts to report basing their fees on the client's ability to pay. Among the women, 85.9% reported doing so, compared to 72.2% of the men.

In terms of their clienteles, female attorneys were more likely than males to report having predominantly affluent clients (see Ta-

32. Women are also more likely than men to have any sort of specialty. Only 15% of the women we interviewed reported having a "general practice," contrasted with 32.4% of the men.

33. See *supra* notes 23 and 26.

ble 4). They also were less likely than male attorneys to represent mostly lower-middle and working-class clients. However, about equal%ages of both groups described their practices as either predominantly middle class or as a cross-section of all socioeconomic classes. This class difference in the clienteles of male and female divorce attorneys can be explained by legal specialization. Divorce clients who are upper or upper-middle class are more likely to seek representation by attorneys who specialize in divorce or family law. Since specialists include a greater%age of women, the clienteles of women attorneys thus differ from those of male attorneys.<sup>34</sup>

**Table 4**      **Class of Clientele by Gender**

	Females	Males
Clients mostly upper or upper-middle class	26.7%	16.5%
Clients mostly middle class or cross-section	38.3%	37.9%
Clients mostly lower-middle and/or working class	35.0%	45.6%
	n = 60	n = 103

Chi square = 2.96 with 2 degrees of freedom;  $p = .23^{35}$

We found a striking difference between female and male attorneys in the tendency to represent women as clients. Based on data taken from Maine court docket records,<sup>36</sup> an average of 75% of the female respondents' divorce clients were wives. For the male interviewees the comparable figure was 53%.<sup>37</sup> Maine docket data also show that wives more often than husbands were represented by counsel in divorce cases. In the nearly 5,000 divorces we sampled in Maine courts over the last decade, the wife alone was represented in 31% of the

34. See Craig McEwen, Richard Maiman & Lynn Mather, *Divorce Lawyer Role Conceptions and the Specialization of Divorce Law Practice* (unpublished manuscript, presented at meetings of the Law and Society Association, Amsterdam, June 1991, on file with Richard Maiman).

35. See *supra* notes 23 and 26.

36. Maine court docket records of divorce cases were randomly sampled from the years 1980, 1983, 1984, 1985, 1986, and 1988. Cases were coded on such variables as whether wife or husband initiated complaint; name of attorney(s) for each party (if any); date of filing; date of divorce; motions filed; hearings held; date of final disposition; grounds of divorce; post-divorce actions (if any). A similar sample of New Hampshire court records has been compiled but has not yet been analyzed.

37. The data for our sample of lawyers reflects almost perfectly the patterns of representation among the larger universe of 996 attorneys in Maine who had done some divorce work during the years examined. An average of 75% of the clients of the 166 female lawyers were wives, compared to an average of 52% for the 830 male attorneys.

cases, the husband alone in 13%, both parties had lawyers in 40% of the cases, and neither in 16%. Overall, women constituted 56% of Maine divorce clients.

About equal proportions of female (68.4%) and male (65.7%) attorneys reported having no preference for either husbands or wives as clients. Among those who did express such a preference, the division is also remarkably similar: 77.8% of the women and 73.5% of the men said that they prefer to represent wives. While these figures suggest no difference on this issue between male and female attorneys, another reading of the data reveals interesting variation.

A content analysis of the attorney responses (coded without knowledge of respondents' gender) shows rather different reasons for client preference where it exists. Among the 39 (14 female, 25 male) attorneys who prefer wives as clients in divorce cases, three types of reasons were given to explain the preference: (1) because wives are more likely to win in court; (2) because wives are less demanding, more reasonable, and more realistic clients, and thus are more likely to follow the lawyer's advice; (3) because of the kinds of issues more likely to be involved in representing wives, e.g., personal growth, empowerment, and development of self-reliance. Although the number of attorneys is small, it is interesting that some gender-based differences emerge in the reasons given for preferring wives as clients. Female attorneys were twice as likely as male attorneys to prefer wives because of the issues involved in their cases. In contrast, male attorneys were more likely than females to prefer wives as clients because they are less demanding or because their cases are easier to win. These differences point to the importance of exploring not only the demographics and features of legal practice, but also how male and female lawyers think about their work and their clients.

## V. UNDERSTANDINGS AND APPROACHES TO DIVORCE LAW PRACTICE

A growing body of social science research proceeds on the assumption that it is the perceptions of law held by individuals, groups, and societies, rather than an objective black letter standard, that determine what is "real" about law and legal institutions.<sup>38</sup> Such an approach underscores the importance of understanding what key participants in the legal process understand their roles in that process to be. For example, whatever the law of divorce may be at a given time and place, it is how that law is understood and experienced by those affected by it that will determine its ultimate meaning. Obviously lawyers are crucial links in the chain connecting legislative en-

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38. See, e.g., *Special Issue: Law and Ideology*, 22 *LAW & SOC'Y. REV.* 628 (1988); *Special Issue on Law, Ideology and Social Research*, 9 *LEGAL STUDIES FORUM* (no. 1) (1985).

actments and judicial decisions with consumers of divorce law. How lawyers think about their divorce work, and particularly how they interact with their clients in the context of that work, will influence the way clients experience their divorce. Arguably, what people "take away" from a divorce is as much a perception of how they have been treated—by their lawyer, by the other party, by the court—as it is an objective result in the form of a legal judgment.<sup>39</sup> Thus, in studying divorce law, it is important to learn more about how lawyers think of their work and, specifically, how they define their own roles in the practice of divorce law.

In our interviews we asked a series of open-ended questions designed to explore how lawyers make sense of their work. Four of the questions were as follows: "What aspect of your work as a divorce lawyer do you enjoy the most?" "What aspect of your work as a divorce lawyer do you enjoy the least?" "What do you consider to be your primary responsibility in representing divorce clients?" "What criteria do you use to judge your success as a lawyer?" As we began our interviews we had no clear idea about where these questions would lead, or if in fact they would lead anywhere at all. However, as we began to analyze the interview data we found that many of the responses to two of these questions fell into two quite well-defined clusters or categories.

Responding to the question about what they liked most about their divorce work, many respondents referred to the satisfaction they took from helping their clients through a process which "can be very emotionally traumatic, very wearing on them," in the words of one lawyer. There were frequent references to the emotional vulnerability of divorce clients and their need for an informed, sympathetic guide. "I like solving people's problems," said one lawyer, "and [I like] knowing that I can help them through the system that they probably wouldn't get through very well themselves." For this group of lawyers, the opportunity to form a close bond with a client is a special and perhaps unique aspect of divorce work. As one respondent put it, "I enjoy the interpersonal contact and intimacy from working on a divorce as opposed to the mechanical aspects of doing real estate transactions."

The other distinct group of respondents answered this question in terms of their enjoyment of the challenge and satisfaction of legal

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39. See, e.g., Austin Sarat & William L.F. Felstiner, *Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction*, 22 *LAW & Soc'y REV.* 737 (1988); Austin Sarat & William L.F. Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office*, 98 *YALE L.J.* 1663 (1989). While in both articles the authors report a considerable amount of data about lawyer-client interaction in divorce, they have very little data about variations across lawyers. In fact, the authors argue in the latter article that what they call "law talk" is relatively uniform among divorce lawyers, and they suggest that gender does not play a significant role in explaining legal discourse. *Id.* at 1670, n.43.

work, especially legal combat. "I really like the courtroom," was a typical response. "I love to get into that arena, and I love the kind of planning for cross-examination. I love the drama of a good trial." For some in this group the greatest pleasure came specifically from winning a case at trial. However, for others the satisfaction lay in achieving a "good settlement" through negotiation. Some in this group talked about enjoying "problem-solving," making it clear, however, that they meant legal or technical, not personal, problems—working out the details of a complicated financial settlement, for example.

A second open-ended question—"What do you see as your primary responsibility in divorce cases?"—also elicited two distinct clusters of responses, each linked thematically to one of the sets of responses to the previous question. One group of lawyers talked about serving their clients' emotional and economic as well as legal needs. Typically this was expressed as "getting [the client] off to a new start—turning their lives around so that they are done emotionally and legally with one part of their life in order to get along with the rest." Some lawyers in this group emphasized the limits of their own powers and a consequent responsibility to "identify problems that are beyond my areas of expertise and to make appropriate referrals." Some spoke of the lawyer's responsibility to the divorcing parties' children and for preserving "the things that . . . are important in terms of family life." Protecting children's interests may mean trying to ensure that one's client has "a decent relationship with the ex-spouse." Lawyers in this group consistently downplayed the value of traditional legal advocacy in divorce because, as one put it, "there is no such thing as winning in a divorce. If one party does exceptionally well [the case] is going to be back in court."

Contrasting sharply with this set of responses is another group in which the lawyer's responsibility in divorce was defined primarily as being the client's legal advisor or advocate. The lawyer's job, said one respondent, is to explain to the client "what the law is with respect to whatever their facts are that I've culled from them, and then giving them some guidance about what to expect, and then taking them through the process, whether it's through a settlement or through a contested trial or through an appeal." An important theme sounded by these respondents is that a lawyer must help the client be realistic about what can be achieved legally in divorce. Ultimately, however, the attorney should "try to get for them what they expect after I've talked to them." In this group of responses one also finds frequent references to making "sure that [the client's] rights are protected, . . . [including] their support, property settlements, and everything else that goes along with it." Or, as another respondent put it, the divorce lawyer's first duty is "to see that [the client is] treated fairly."

For each of these questions there was also a third group of re-

sponses which combined the themes of the other two groups. A small number of lawyers gave answers that were so distinctive or idiosyncratic that no classification of them was possible. The responses to the other two questions were also coded in similar fashion, but because they were less complete and did not fall as neatly into these clusters, they are not used in this analysis.

We had difficulty finding labels for these clusters that were both descriptive and value-neutral. After much discussion we chose to characterize the first set of answers to each question as "client-adjustment" responses, and the second as "legal-craft" responses. The third group we termed "mixed." It should not be assumed that a "client-adjustment" response implies indifference to the importance of legal advice or advocacy, or that a "legal-craft" answer suggests that a lawyer does not care about the client's overall welfare. Nevertheless, we are confident that we have identified two different ways in which our respondents approach their work as divorce lawyers. We will refer to these approaches as role orientations.<sup>40</sup>

Answers were coded independently by two of the authors, and disagreements were resolved by discussion. In essence, each answer was scored "1" or "3" depending on whether it was exclusively legal-craft oriented or client-adjustment oriented, and "2" if it was mixed. The average of the two scores was computed and the scores divided into three groups: legal-craft oriented lawyers (1-1.50), mixed-types (1.51-2.50), and client-adjustment oriented lawyers (2.51-3.00).<sup>41</sup>

Overall, 28% of our respondents were classified as client-adjustment oriented, 46% were legal-craft oriented, and 26% were a mixture of the two. Next we explored whether there were differences between the responses of our female and male respondents to these open-ended questions. In fact, female respondents were much more likely than the males to be client-adjustment oriented, and less likely to be legal-craft oriented (see Table 5).

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40. This typology is similar to but not identical with H. O'Gorman's differentiation between problem-oriented and people-oriented lawyers. HUBERT J. O'GORMAN, *LAWYERS AND MATRIMONIAL CASES: A STUDY OF INFORMAL PRESSURES IN PRIVATE PROFESSIONAL PRACTICE* (1963). His third category of money-oriented lawyers drops out in our analysis.

41. When an answer to one question was missing or uncodable the answer to the other served as the score for this variable. In two cases, codable answers were unavailable for both questions. In both instances we estimated the score on this variable by similarly coded responses to a question about what the lawyer liked least about divorce practice.

**Table 5**      **Lawyer Role Orientations by Gender**

	Females	Males
Client-adjustment	36.7%	23.3%
Mixed	31.7%	22.3%
Legal-craft	31.7%	54.4%
	n = 60	n = 103

Chi square = 7.93 with 2 degrees of freedom;  $p = .02^{42}$

However, because female attorneys have graduated from law school and entered the legal profession more recently than the males, it is conceivable that the variations in role orientations reported in Table 5 are not gender-based, but reflect instead age differences in world-view or changes in law school training. To test this hypothesis, we divided our respondents into two groups: those whose law school training ended in 1979 or earlier, and those who graduated from law school after 1979.<sup>43</sup>

Analysis revealed, however, that there is no statistically significant relationship between respondents' role orientations and when they graduated from law school. Lawyers whose legal training occurred more recently scored higher in *both* the client-adjustment and the legal-craft orientations than those with greater seniority. Thus the recency of the respondents' legal training, taken alone, does not explain the observed variation in their role orientations. In both graduation groups female attorneys were more likely than their male counterparts to be client-adjustment oriented, and less likely to be legal-craft oriented. In fact, the gender difference is especially striking among those who graduated from law school after 1979 (see Table 6). Thus the fact that there was a significantly greater incidence of client-adjustment orientation among females compared to males does not appear to be the product of any differences either in age or in the law school training they received.

42. See *supra* notes 23 and 26.

43. Our focus on year of law school graduation also provides some insight into whether age of attorneys helps explain differences in their role orientations. While we lack direct data on age, we observed from the interviews that there is a strong correlation between age and year of graduation from law school.

**Table 6**      **Role Orientations of Post-1979 Graduates by Gender**

	Females	Males
Client-adjustment	40.0%	8.0%
Mixed	40.0%	28.0%
Legal-craft	20.0%	64.0%

n = 25

n = 25

Chi square = 11.63 with 2 degrees of freedom; p = .003<sup>44</sup>

Given the strong correlation among our respondents between gender and the choice of divorce as a specialization, we must consider the possibility that it is not gender but specialization that accounts for the variations in role orientations that we have observed. In fact, there is a strong relationship between specialization and role orientation (see Table 7). Divorce specialists (those with one-third or more of their practice devoted to divorce) were nearly twice as likely as non-specialists to be client-adjustment oriented; conversely, specialists were only about half as likely as non-specialists to have a legal-craft orientation.<sup>45</sup>

**Table 7**      **Lawyer Role Orientations by Specialization**

	Divorce Specialists	Divorce Non-specialists
Client-adjustment	35.1%	18.8%
Mixed	31.9%	17.4%
Legal-craft	33.0%	63.8%

n = 94

n = 69

Chi square = 15.19 with 2 degrees of freedom; p = .0005<sup>46</sup>

In order to understand the relative influence of gender and specialization on our respondents' role orientations, we compared the responses of male and female attorneys while controlling for their specializations. Table 8 reveals that the relationship between gender and role orientation is much stronger among divorce specialists than among non-specialists. Female divorce specialists are more likely

44. See *supra* notes 23 and 26.

45. Further evidence of the importance of specialization for understanding variations in our respondents' role orientations comes from a multiple regression analysis. Calculating the relative influence of four variables on lawyers' role orientations, we found that specialization had the greatest influence, followed closely by gender. Neither of the two other variables we tested—lawyer's year of law school graduation and lawyer's state of practice—had any appreciable influence.

46. See *supra* notes 23 and 26.



than their male counterparts to be client-adjustment oriented, and considerably less likely to be legal-craft oriented. This pattern does not appear for non-specialists, although female non-specialists are still more likely than their male counterparts to be client-adjustment oriented.

**Table 8**      **Role Orientations by Gender and Specialization**

	<i>Specialists</i>		<i>Non-specialists</i>	
	Females	Males	Females	Males
Client-adjustment	40.0%	30.6%	26.7%	16.7%
Mixed	37.8%	26.5%	13.3%	18.5%
Legal-craft	22.2%	42.9%	60.0%	64.8%
	n = 45	n = 49	n = 15	n = 54
	Chi square = 4.55 with 2 degrees of freedom; p = .10		Chi square = .85 with 2 degrees of freedom; p = .65 <sup>47</sup>	

If one makes a different set of comparisons across the columns in Table 8, it is also clear that specialization is strongly linked to role orientation for both men and women, but particularly for women. Of the men, 16.7% of the non-specialists were client-adjustment oriented, compared to 30.6% of the specialists; while for women, 26.7% of non-specialists were client-adjustment oriented, compared to 40% of the specialists. At the other extreme, 64.8% of male non-specialists were legal-craft oriented, as against 42.9% of male specialists. Most striking, of the women, 60% of the non-specialists were legal-craft oriented, compared to only 22.2% of specialists.

In sum, while gender and specialization appear to work together to explain our respondents' role orientations, the interaction is much stronger for women than for men. That male and female divorce specialists were less similar in their role orientations than the non-specialists in our sample is somewhat counter-intuitive. One might think that the processes of self-selection and/or professional socialization would make the male and female specialists a more homogeneous group than the non-specialists. However, just the opposite appears to be the case.

## VI. DISCUSSION OF FINDINGS

Through our interviews with the divorce bar in selected areas of two rural states, we have discovered similarities and differences between female and male lawyers. Lawyers in our sample were generally similar in the types of law schools attended, in their marital

47. See *supra* notes 23 and 26.

status, in their employment status, and in their mean hourly legal fees. However, gender differences emerged in that women attorneys tended to be younger than their male counterparts and to have graduated from law school more recently. Women were also less likely than men to have children. None of these findings is at all surprising given the problems faced by professional women in terms of family and in terms of the recent entry of women into the profession.

More interesting, we think, are the differences found between male and female divorce lawyers in their legal practices. There was a dramatic gender-related difference in the lawyers' tendency to specialize in divorce cases. Within our sample far more women than men reported that one-third or more of their practice was devoted to divorce. Women could be specializing more in divorce because of the issues involved—i.e., families and children. Or the greater female representation could be due to the inability of women to gain easy access to other areas of the legal profession. The field of domestic relations law has historically ranked low in prestige within the legal profession, for several apparent reasons: the belief that the issues in divorce are emotional ones which do not involve "real law"; the fact that divorce clients are individuals rather than businesses (and predominantly women besides); the low income for divorce attorneys in comparison to other fields of law; and the disproportionate number of women lawyers historically practicing in the field of matrimonial law.<sup>48</sup>

As a consequence of their disproportionate representation among divorce specialists, women lawyers in our sample reported a slightly higher percentage of upper- or upper-middle-class clients. This pattern is consistent with the relationship between class of client and the tendency to seek representation from a specialist. Female divorce lawyers were also much more likely than male divorce lawyers to represent wives as clients. Are women clients "channeled" to women lawyers through informal referral networks and through patterns of case assignments in law offices? Or do women clients seek out female attorneys, perhaps feeling more comfortable with a lawyer who is also a woman? Although our data do not answer these questions directly, they do provide some intriguing evidence about the relationship between gender and role orientation in the practice of divorce law.

While the responses of women to our indicators of role orientation divided fairly evenly among the three dimensions of client-adjustment, mixed, and legal-craft, the responses of men fell heavily (by a factor of about two to one) in the legal-craft cluster. This division was particularly pronounced for specialists. The relationship be-

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48. See EPSTEIN, *supra* note 1, at 146.

tween gender and role orientation among divorce specialists is striking: female divorce specialists were more likely to be client-oriented (i.e., to define their work in terms of helping people solve their problems, to focus on their clients rather than on the law *per se*, and to see their most satisfying results in terms of their contact with their clients); in contrast, male divorce specialists were much more likely to be oriented toward the law (i.e., to define their work in terms of case results, to concentrate on the formal legal process and legal skills, and to focus on the response of the legal community to their work). At the same time, both male and female specialists were much more likely to be client-adjustment oriented than were non-specialists.

To help interpret these findings, we can draw on the two major strands in feminist jurisprudence, characterized by Robin West<sup>49</sup> as "cultural feminism" and "radical feminism." Both types of feminism emphasize "women's fundamental material difference from men,"<sup>50</sup> yet there is little agreement between the two sets of theorists beyond that. The first school of feminist legal theory draws heavily on the work of Carol Gilligan,<sup>51</sup> while the second is best exemplified by the writing of Catharine MacKinnon.<sup>52</sup> Interestingly, our data seem to be consistent with *both* schools of feminist thought, as discussed below.

The first group of feminist legal scholars, characterized by West as cultural feminists, has applied to lawyers the insights of feminist theory about women's different voice.<sup>53</sup> Gilligan<sup>54</sup> and Nancy Chodorow,<sup>55</sup> writing from the perspective of moral and psychological development, argue that women have a different approach from men to conflict and problem-solving. Because of differences in early socialization, women are said to place greater value on social relationships while men rely more on rules; where women tend to define problems in terms of their social and political context, men use abstractions in their approach to problems. Thus, two distinct moral perspectives are defined. A "morality of care" values harmony and maintenance of relationships, seeks compromise, and views the social world as interdependent. In contrast, a "morality of rights" val-

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49. Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 13 (1988).

50. *Id.* at 14. For an extensive discussion of different views in feminist legal thought, see KATHARINE T. BARTLETT & ROSANNE KENNEDY (eds.), *FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER* (1991).

51. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

52. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987) [hereinafter *MacKinnon*].

53. See, e.g., West, *supra* note 49; Menkel-Meadow, *supra* note 6.

54. GILLIGAN, *supra* note 51; NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING* (1978).

55. CHODOROW, *supra* note 54.

ues formal rules, engages in abstract reasoning, and sees the world as composed of autonomous, separate individuals.<sup>56</sup>

Gilligan's book was enormously influential in stimulating feminist scholarship on the nature of gender differences, but it also received criticism.<sup>57</sup> While some faulted Gilligan's methodology, others challenged her conclusions. Catharine Greeno and Eleanor Maccoby argue that women are still more like men than they are different from them.<sup>58</sup> Another problem with theories based on gender is that they generally ignore variation by race and class.<sup>59</sup>

Several empirical legal studies have sought to evaluate the usefulness of the contrasting moral perspectives of care and justice through research on women and men lawyers. The practice of law is an excellent occupation for applying Gilligan's ideas because lawyers regularly deal with conflict and problem-solving, and they operate in a world defined by abstract rights and duties. According to this strand of feminist thought, for example, female attorneys would be more likely than males to emphasize specific contextual features of a case, and to deemphasize formal legal rules.<sup>60</sup> Women lawyers also might interact differently than men with their clients, seeking to understand more fully what the client wants and why, rather than imposing the lawyer's view of the client's best interest.<sup>61</sup> However, there is only modest empirical research thus far to test these hypotheses about gender difference among lawyers.<sup>62</sup>

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56. GILLIGAN, *supra* note 51; see also RAND JACK & DANA CROWLEY JACK, *MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS* 7-12 (1989) [hereinafter JACK & JACK].

57. See, e.g., Symposium, *ON IN A DIFFERENT VOICE: AN INTERDISCIPLINARY FORUM*, 11 SIGNS 304 (1986); Note, *Toward a Redefinition of Sexual Equality*, 95 HARV. L. REV. 487 (1981); Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts and Feminism*, 7 WOMEN'S RIGHTS L. REP. 175 (1982).

58. Catharine G. Greeno & Eleanor E. Maccoby, *How Different is the "Different Voice"?* 11 SIGNS, 310, 315 (1986). Greeno and Maccoby argue that Gilligan's conclusions demand quantitative, not simply qualitative, evidence.

59. See, e.g., Carol B. Stack, *The Culture of Gender: Women and Men of Color*, 11 SIGNS, 321, 324 (1986). As a study of lawyers in two New England states, our research could also be said to ignore variation by race and class. Because of the small minority populations in these states, it is not surprising that our samples did not include minority lawyers. U.S. Census figures for 1990 report a 2% minority population for Maine, and a 2.7% minority population for New Hampshire. See *WORLD ALMANAC AND BOOK OF FACTS* 1992, at 129 (1991). Also, as lawyers, our respondents share a certain degree of homogeneity by class.

60. See, e.g., Taber et al., *supra* note 13, at 1249.

61. See Menkel-Meadow, *supra* note 6; see also DEBORAH M. KOLB & GLORIA G. COOLIDGE, *HER PLACE AT THE TABLE: A CONSIDERATION OF GENDER ISSUES IN NEGOTIATION* (Program on Negotiation, Harv. L. Sch. Working Paper Series 88-5, 1988); JACK & JACK, *supra* note 56.

62. Several studies in this vein have been done on law students, investigating the extent to which legal education is experienced differently by men and women. See, e.g., Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1 (1989-90); Taber et al.,

Our data on lawyers' role orientations can be understood in terms of this strand of feminist theory. The fact that female divorce lawyers are more likely than their male counterparts to be classified as client-adjustment oriented supports the view that women are more likely than men to be concerned with the specific problems of the person they are helping, and to be more interested in the personal client relationship than with the abstract legal rules of divorce. Likewise, the finding that male lawyers in our sample were oriented more towards legal skills and to the formal legal process is certainly consistent with the view that men think more in terms of abstract concepts of right and justice. In a highly differentiated profession, specialization in divorce law permits both men and women to bring their practices into line with their self-conceptions and values. Both men and women who feel more comfortable as care-givers will gravitate toward family law, where those values are often reinforced and rewarded by clients. Thus, if women are more likely to hold such values, they will be drawn disproportionately into divorce law specialization. If women's self-identities are more deeply tied to the care-giving role, the self-selection process will work more strongly for them.

Does this interpretation then imply that women divorce specialists nurture and care for their clients, seeking compromise and avoiding formal litigation, while the men seek to solve their clients' problems through emphasis on legal rights and the adversary process? Not necessarily. Even accepting the interpretation given thus far, it is still quite possible that women lawyers who speak passionately about their concern for their client will be vigorous advocates for their clients' interests through negotiation and litigation. That is, they may *think* in terms of the personal relationship with their cli-

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*supra* note 13; Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988). The Taber survey included not only students but also all female graduates and a sample of male graduates of Stanford Law School. The survey found few gender differences on quantitative indicators of employment experience, but in their responses to hypothetical legal situations, female and male lawyers did differ somewhat, as predicted in the discussion above. The women lawyers rated contextual factors in cases more highly than the men, although there was no difference in their use of abstract factors or their use of legal precedent. Taber *supra* note 13, at 1248-51.

In a second recent study of gender and lawyering, Jack and Jack conducted in-depth interviews with 36 lawyers in a county in Washington. JACK & JACK, *supra* note 56, at xi-xii. The interviewees comprised all 18 women lawyers practicing in the county in 1984 and a sample of male attorneys from the same county matched by type and length of practice. *Id.* Their focus was specifically on moral reasoning among lawyers, and they explicitly tested for differences based on Gilligan's two moral world views. Consistent with Gilligan's theory, their study found that women were disproportionately represented among lawyers who showed significant morality of care, while men's perspective was dominated by morality of rights. *Id.* at 54-55 and Appendix II.

ents and they may care most about furthering the overall interests of their clients, but then seek to do this through the formal legal process. On the other hand, male lawyers may *think* in terms of abstract legal rights and may be most motivated by these values, but then may act in ways that are not unlike their female counterparts in style and practice. Further analysis of our data should allow us to explore the relationship between lawyers' role orientations and their styles of legal negotiation and practice.

The second strand of feminist thought, characterized as radical feminism, accepts the existence of gender differences posited by Gilligan, but argues that the differences are the result of male domination over women. As MacKinnon writes: "Gender is an inequality of power . . . inequality comes first; differences come after."<sup>63</sup> From this perspective, the problem with cultural feminism is that "a discourse of gender difference serves as ideology to neutralize, rationalize, and cover disparities of power, even as it appears to criticize them."<sup>64</sup> In the radical feminist view, then, the "female" attributes of caring and nurturance so celebrated by Gilligan (and others) are simply the product of the systematic domination and subordination of women that leaves women no other social role; "women value care because men have valued women according to the care they give . . . women think in relational terms because women's social existence is defined in relation to men."<sup>65</sup> Unlike the cultural feminists who envision positive changes coming from the increased numbers of women in the law,<sup>66</sup> the radical feminists are skeptical. Indeed, as MacKinnon argues, the only way to uncover truly feminine values is through feminist method, that is, through women listening to other women and discovering the commonality of their experience.<sup>67</sup>

To return to our data on gender and role orientation, there are several ways in which they can be interpreted through a radical feminist lens. First, to the extent that our male lawyers are disproportionately oriented toward legal-craft, they could simply be mirroring their natural affinity for a legal system that is patriarchal. Law in general, and legal rights in particular, "reflect a male viewpoint characterized by objectivity, distance, and abstraction."<sup>68</sup> Second, female lawyers in our sample could exhibit a greater sensitivity to

63. MacKinnon, *supra* note 52, at 8.

64. *Id.*

65. CATHERINE A. MacKinnon, *TOWARD A FEMINIST THEORY OF THE STATE* 51 (1989).

66. See, e.g., JACK & JACK, *supra* note 56, at 169-71; Menkel-Meadow, *supra* note 6, at 49-60.

67. MacKinnon, *supra* note 52, at 83-125.

68. Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, in *FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER* (Katherine T. Bartlett & Rosanne Kennedy eds., 1991), *supra* note 50, at 319.

client concerns, not because of their natural sense of care but because they have been excluded from the predominantly male legal world<sup>69</sup> and thus find value in what they have been rewarded for doing best: caring for others. Both the men and the women who specialize in divorce law face heavy and repeated demands to attend to clients' emotions and personal needs. As a consequence, specialists are particularly likely to learn to define their own satisfactions and primary responsibilities in terms of client-adjustment. However, women lawyers face stronger pressures to respond in that fashion to clients, both male and female, who reflect the cultural view that women should be care-givers.

Finally, it is important to recall that female divorce lawyers are much more likely than males to represent women clients. Given that an average of 75% of their divorce clients are women, it is possible that some female attorneys see themselves engaged in something of a political struggle against the male-dominated legal system. That is, women lawyers may take on a client-adjustment role orientation as an act of female solidarity—to help themselves and the wives whom they represent struggle against male lawyers and husbands.

To conclude which of these rival interpretations better explains our data will require more study. In particular, we will want to consider the extent to which the lawyers' role orientations are reflected in their everyday work, and how their rhetoric of "helping clients" or "defending clients' rights" emerges in the nature of their legal practice.

## VII. CONCLUSION

This Article reports on a study of male and female lawyers in Maine and New Hampshire. Consistent with earlier research,<sup>70</sup> we have found a disproportionately high representation of women among lawyers specializing in divorce. Our research also confirms what some have hypothesized<sup>71</sup> and others have denied<sup>72</sup>—that female lawyers tend to approach their divorce work somewhat differently than men. However, our findings about the role of specialization add an important new dimension to previous discussions of gender and lawyering. We have found striking gender differences in role orientation among lawyers in our sample who specialize in divorce; for non-specialists, however, the differences are quite small. Using our measures of role orientation—what lawyers like most

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69. There is modest evidence for this position from some of our interviews with women attorneys. Occasionally comments were made by women about the difficulties that they experienced in trying to negotiate cases with their male peers.

70. See *supra* note 10.

71. See *supra* notes 6 and 56.

72. See JACK & JACK, *supra* note 56, at 169-71; Menkel-Meadow, *supra* note 6, at 49-60.

about divorce work and how they define their primary responsibility in divorce cases—we have found that female divorce specialists tend to differ from both female and male non-specialists, and from male specialists as well, in emphasizing relationships with their clients, and in wanting to help their clients cope with the non-legal aspects of divorce.

Why this is so is beyond the scope of our present research. The fact that female lawyers (but not males) were found to represent wives disproportionately in divorce may relate to some of these findings. Another important question is whether the variations in role orientations are related to behavioral differences in lawyers' case strategies, or in how lawyers interact with their clients.

Divorce law is constructed in the offices of lawyers, in the chambers of judges, and in the hallways and hearing rooms of trial courts. Understanding the divorce process thus requires some investigation into how lawyers define and interpret their everyday work. The fact that some lawyers regard themselves primarily as legal advocates, while others emphasize client problem-solving, underscores the complex nature of the law of divorce. Moreover, the question of the "effectiveness" of any divorce lawyer must then be answered in terms of these alternate roles—roles which we have seen interact with gender and specialization in the practice of divorce law.



